In the High Court of Uttaranchal, at Nainital.

A.O. No. 420 of 2003
Smt. Saleeman W/o late Rafiq Ahmad
R/o Mohalla Shair Mohammad Town
Tehsil and District Pilibhit …. Appellant.

Versus

1- Brijesh Kumar Maheshwari
S/o S.C. Maheshwari
R/o Maheshwari Bhawan
Rajpara Haldwani, District Nainital.

2.- National Insurance Company
Divisional Officer, Haldwani
District Nainital. … Respondents.

Sri Manish Dalakoti, learned counsel for the appellant.

Sri Prabhat Pandey and Sri P.S. Rawat, learned counsel for the respondents.

AND

A.O.No. 190 of 2002

National Insurance Co. Ltd.
Through Divisional Manager,
Divisional Office, 5/222, Canal Road,
Haldwani District Nainital …. Appellant.

Vs.

1- Smt. Saleeman W/o late Rafiq Ahmad
R/o Mohalla Shair Mohammad Town
Tehsil and District Pilibhit.

2- Brijesh Kumar Maheshwari
S/o S.C. Maheshwari
R/o Maheshwari Bhawan
Rajpara Haldwani, District Nainital

Sri Prabhat Pandey, learned counsel for the appellant.
Sri Manish Dalakoti and Sri P.S. Rawat, learned
Counsel for the respondents.

Coram: Hon'ble M.M. Ghildiyal, J.

Hon'ble B.C. Kandpal, J.

Dated: 15th February, 2006.

(Per: Hon'ble B.C. Kandpal, J.)

The aforesaid appeals emerge out from the judgment and award dated 13-5-2002 passed by the Motor Accident Claim Tribunal/A.D.J./ II F.T.C., Nainital (hereinafter referred as "Tribunal) in M.A.C.T. Case No.53/1999, hence are being decided by a common judgment.

2- By the impugned award the petitioner/appellant Smt. Saleeman was awarded compensation to the tune of Rs. 1,37,000/- against the National Insurance Company to be paid within one month and in default the petitioner was also awarded interest @ 9% per annum form the date of presentation of the petition till the date of final payment of compensation. The petitioner has preferred her appeal for enhancement of compensation amount whereas the respondent/appellant National Insurance Company has preferred its appeal to set aside the award against it.

3- The brief facts giving rise to the present appeals are that the petitioner/appellant Smt. Saleleman filed a claim petition with the allegations that on 19-4-1998 her son Anish Ahmad was traveling along with his luggage in truck No. U.R.N. 9371 from Kichha to Haldwani. The driver of the truck was driving it at a high speed and negligently. When at about 10.15 a.m. the truck reached at the by-pass near village Kishanpur the driver lost control over the steering of the truck and it reached in the field on left side and was over-turned, as a result, Anish Ahmad sustained grievous injuries and died at the spot. The first information report of the accident was lodged on the same date at P.S. Kichha. The petitioner also pleaded that at the time of the accident the age of the deceased Anish Ahmad was 25 years and he was vegetable-vendor, from which he was earning Rs. 6000/- per month. The claimant therefore, claimed compensation of Rs.12,28,500/-in lieu of death of Anish Ahmad.

4- The opposite party/owner of the truck contested the claim petition by filing his written statement. He has pleaded that the driver of the offending truck was driving it cautiously. He also pleaded that he infact did not authorize the driver to carry passengers as such the deceased was travelling in the truck in an unauthorized manner. It was further alleged that the driver of the truck was having a valid driving licence and the truck was insured with National Insurance Company.

5- The insurance company contested the claim by filing its written statement and denied the allegations of the petition for want of knowledge. It also pleaded that the truck was being driven by a driver having no valid driving licence. The deceased was gratuitous passenger and was travelling in the truck unauthorizedly. It was further pleaded that the driver of the truck was not made a party to the claim petition, hence the petition is bad in law.

6- On the basis of pleadings of the parties, the learned Tribunal framed following points for determination:-

1- Whether on 19-4-1998 at about 10-15 A.M. at Kichha-Haldwani by-pass road near village Kishanpur, District Udham Singh Nagar the driver of truck No. U.R.N. 9371 was driving it at a high speed and negligently due to which the truck was overturned and Anish Ahmad who was traveling in it sustained grievous injuries and died due to the injuries?.
2- Whether deceased Anish Ahmad was traveling in the truck unauthorisedly? If so, its effect?.
3- Whether the petition is bad in law for non-joinder of the truck driver as a party?.
4- Whether the petitioner is entitled to get any amount of compensation? If yes, then how-much and from whom?.

7- The petitioner in order to support her case, produced herself as P.W.1 and also filed certain documents. The opposite parties did not adduce any oral or documentary evidence.

8- The learned Tribunal on assessment of evidence on record and after hearing the parties came to the conclusion that the driver of the truck was driving it rashly and negligently and the accident took place due to his fault. It further observed that the deceased Anish Ahmad was carrying his luggage in the truck and was a valid passenger and his death was caused due to the grievous injuries sustained by him in the accident. On the point of non joinder of the truck driver as party to the petition, the learned Tribunal held that the opposite parties did not adduce any evidence, hence it was decided against them. The

Learned Tribunal accordingly awarded compensation payable by insurance company as aforesaid.

9- The petitioner, being dissatisfied from the compensation amount has come up in appeal for enhancement of the same, mainly on the ground that the learned Tribunal fixed a meager amount towards the income of the deceased and in any view of the matter it ought to have fixed at least the minimum wages; that the multiplier used by the learned Tribunal in computing the compensation is not in accordance with the principle laid down in Shushma Thomas case and that the learned Tribunal awarded meager amount towards pain, agony, frustration and dejection. In this way the appellant prayed from enhancement of compensation amount to Rs. 12,28,500/- as was claimed in the claim petition.

10- The appellant National Insurance Company has preferred its appeal mainly on the ground that the offending truck was driven by a driver not having valid driving licence; that the finding of the learned Tribunal on the issue of validity of driving licence is wrong and liable to be set aside; that the truck was driven against the terms and conditions of insurance policy; that the deceased was a gratuitous passenger in goods carriage hence insurance company can not be held be liable to pay any compensation by virtue of insurance policy and that the deceased can not be treated to be a third party in the circumstances of the case.

11- We have heard the learned counsel for the parties and have perused the evidence adduced on record.

12- First of all we deal with the appeal No. 420/2003 which has been filed by the appellant/claimant Smt. Saleeman for the enhancement of the compensation.

13- Learned counsel for the appellant has argued that the tribunal has not assessed the evidence in correct perspective for calculating the amount of compensation to be awarded to the claimant. It has been submitted that in any view of the matter the leaned tribunal ought to have fixed at least the minimum wages as income of the deceased even then the amount of

award would have been much more than the amount awarded by the tribunal.

14- The learned counsel for the respondent No.2 National Insurance Company has argued that the judgment and award of the learned Tribunal is absolutely justified and does not require any interference. It has also been submitted that the correct and adequate multiplier has been adopted by the claim tribunal in calculating the amount of compensation.

15- The evidence on record shows that the deceased Anish Ahmad was aged about 25 years at the time of accident. As per the claim petition the deceased was engaged in the trade of vegetable selling and he was earning Rs. 6000/- per month.

16- Appellant Smt. Saleeman (claimant) appeared before the court below but did not adduce any cogent evidence pertaining to the income of the deceased.

17- It is true that the claimant has not adduced any cogent evidence in order to establish the exact monthly income of the deceased even then we are of the opinion that in the year 1998 a person who was engaged in the work of labourer must be earning at least Rs. 70/- per day. Therefore, in case if the principle of Minimum Wages Act is to be applied in this case, the monthly income of the deceased thus would come to Rs. 2100/-. Out of this amount if we deduct 1/3rd (Rs. 700/- per month) as personal expenses of the deceased even then the deceased would have given a financial assistance of Rs. 1,400/- per month to his family. As the deceased was unmarried, and the claimant being his mother, is the only dependent. The age of the claimant was about 51 years at the time of the accident, therefore, keeping in view the age of the claimant/appellant, the learned tribunal has adopted just and proper multiplier of '11' in this case. We do not find any justification for interfering in the multiplier adopted by the learned tribunal.

18- We come to the conclusion that in case if the financial assistance to the claimant for Rs. 1400/- per month is calculated then the total amount of compensation comes to Rs.

1400/- x 12= 16,800/- x 11= 1,84,800/-, rounded to Rs. 1,85,000/-.

19- On the basis of the assessment of evidence, we are of the definite view that this A.O. No. 420 of 2003 Smt. Saleeman vs. Brijesh Kumar and another is liable to be partly allowed on the amount of compensation only. The amount of compensation should be Rs. 1,85,000/- instead of Rs. 1,37,000/- as has been awarded by the tribunal.

20- So far as the A.O.No. 190/2002 filed by National Insurance Company is concerned, the argument advanced by the learned counsel for the insurance company appears to be without any force. The assessment of the evidence on record clearly show that the accident took place on account of rash and negligent driving of truck No. U.R.N. 9371. The deceased Anish Ahmad was traveling in the truck along with his goods which was carrying by the truck in question. Anish Ahmad sustained injuries in this accident and he died at the spot. The evidence on record also show that the deceased was traveling in the truck along with his goods, therefore, in case of his death the insurance company is liable to pay the compensation.

21- As far as the driving licence of the driver is concerned, it is evident from the record that the driver was having valid driving licence at the time of the accident and the insurance company could not adduce any evidence before the court below in order to show that the driver of the truck involved in the accident was either having fake or invalid driving licence. The appeal No. 190/2002 National Insurance Company vs. Smt. Saleeman and another is, therefore, liable to be dismissed.

22- The A.O. No. 420/2003 Smt. Saleeman vs. Brijesh Kumar and another is accordingly partly allowed. The impugned judgment and award dated 13-5-2002 passed by the Motor Accident Claim Tribunal/II F.T.C./A.D.J., Nainital is modified to the extent that the amount of compensation to be awarded to the claimant should be Rs. 1,85,000/-. The claimant/appellant Smt. Saleeman would be entitled to get this amount from the insurer of the vehicle, that is, National

Insurance Company (respondent No.2) along with an interest of 9% per annum. The respondent No.2 is directed to pay the amount of compensation within a period of 45 days.

23- The A.O. No. 190/2002 filed by the National Insurance Company is dismissed.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

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